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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/701,927	01/16/2001	Eiban Gunter	802	1316

7590 02/10/2004

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EXAMINER

MAYES, MELVIN C

ART UNIT PAPER NUMBER

1734

DATE MAILED: 02/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/701,927

**Applicant(s)**

GUNTER ET AL.

**Examiner**

Melvin Curtis Mayes

**Art Unit**

1734

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11, 25-27 is/are rejected.
- 7) ☒ Claim(s) 12-24 and 28-31 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>1/16/01</u> . | 6) <input type="checkbox"/> Other: ____.  |

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## **DETAILED ACTION**

### ***Oath/Declaration***

(1)

The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because: the foreign application 100 02 401.7 has a foreign filing date of 1/20/2000 (see International Application), not 1/20/99 as stated on the declaration.

### ***Specification***

(2)

The disclosure is objected to because of the following informalities: reference to the claims on page 1 should be deleted.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

(3)

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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(4)

Claim 1-8 and 25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "the holding device" in line 9. There is insufficient antecedent basis for this limitation in the claim.

***Claim Interpretation***

(5)

Claim 1 claims step of "holding," "releasing the holding device" and "seizing" the object. For purposes of examination, the steps of "holding" and releasing" are interpreted as performed by the "holding device" while the step of "seizing" is not required to be performed by the "holding device" used in the other steps.

***Claim Rejections - 35 USC § 103***

(6)

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35

U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

(7)

Claims 1, 2, 4, 5, 8-11, 26 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Menayan 6,263,940.

Menayan disclose a method and apparatus for in-line continuous sleeve labelling of bottles comprising: providing an iris carrier 54 (separating or spreading jaw unit) to engage and expand the label sleeve and descend about a bottle to apply the label sleeve to the bottle, the iris carrier having extensions which project below the plain of the iris carrier and flare outwardly to engage the bottle as the iris carrier initially descends about the bottle; and providing a container stabilizer to catch the top margin of the label once the iris carrier has descended below the

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container stabilizer and to hold the label to the bottle as the iris carrier continues its downward travel and slides out from within the label, the container stabilizer comprising belts driven in synchronization with the iris carrier and the pedestal system (conveyor) feeding the bottles.

Menayan discloses that once the iris carrier releases the label, the label may then remain snugly attached to the bottle or may be subjected to a shrinking process by application of heat before exiting the container stabilizer and discloses that as the bottle is being ensleeved by the iris carrier, a weighted blanket can engage and travel with the top of the bottle to stabilize it upon the pedestal (col. 7-16).

By providing the iris carrier with extensions which flare outwardly and engage the bottle as the iris carrier initially descends about the bottle, the bottle (object) is obviously held by its mantle surface by positive or friction lock prior to the pull-over application by the iris carrier (separating jaw unit) and the extensions (a holding device) obviously release the mantle surface as soon as the iris carrier (separating jaw unit) at least partially surrounds the bottle (object) over its mantle surface, as claimed in Claim 1. By catching the top margin of the label on the bottle by the container stabilizer, the bottle (object) is obviously seized by the area of its mantle surface covered with the label, as claimed in Claim 1.

Further by providing a weighted blanket to engage and travel with the top of the bottle to stabilize it upon the pedestal as the bottle is being ensleeved by the iris carrier, axial support (the blanket) of the object is obviously provided after the extensions (holding device) release the bottle, as claimed in Claim 2.

By providing a container stabilizer of belts to catch the top margin of the label once the iris carrier has descended below the container stabilizer and hold the label to the bottle as the iris

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carrier continues its downward travel and which is driven in synchronization with the iris carrier and the pedestal system feeding the bottles, a controllable holding device is obviously provided in associating with the iris carrier (spreading jaw unit) for seizing the bottles (object) with positive or friction lock in the area its mantle surface, as claimed in Claim 9, after pull-over application of the label sleeve, as claimed in Claim 11.

***Allowable Subject Matter***

(8)

Claims 12-24 and 28-31 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

(9)

Claims 3, 6, 7 and 25 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

***Conclusion***

(10)

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

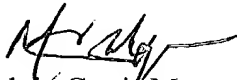
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(11)

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melvin Curtis Mayes whose telephone number is 571-272-1234. The examiner can normally be reached on Mon-Fri 7:30 AM - 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Crispino can be reached on 571-272-1226. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Melvin Curtis Mayes  
Primary Examiner  
Art Unit 1734

MCM  
February 3, 2004